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GUAM FOREIGN INVESTMENT EQUITY ACT

JUNE 24, 2002.—Ordered to be printed

Mr. BINGAMAN, from the Committee on Energy and Natural Resources, submitted the following

R E P O R T

[To accompany H.R. 309]

The Committee on Energy and Natural Resources, to which was referred the Act (H.R. 309) to provide for the determination of withholding tax rates under the Guam income tax, having considered the same, reports favorably thereon without amendment and recommends that the Act do pass.

PURPOSE

The purpose of H.R. 309 is to authorize the Government of Guam to tax foreign investors at the same rates that States tax them under tax treaties between the United States and foreign nations.

BACKGROUND AND NEED

The Federal Internal Revenue Code of 1986 levies a tax on non-resident aliens in the amount of 30 percent of the income the non-resident alien receives from investments in the United States. 26 U.S.C. 871(a). The United States has, however, entered into tax treaties with many nations, which lower the tax rate for investors from any nation that has entered into such a treaty. The treaties typically lower the tax rate from 30 percent to between 5 and 15 percent. The lower tax rate encourages foreign investment in the United States.

Guam is an unincorporated territory of the United States and its residents are citizens of the United States. Guam is governed by an organic act approved by Congress. The Organic Act of Guam applies the income tax laws in force in the United States to Guam. Guam collects the federal income tax in the form of a separate Guam territorial income tax. 48 U.S.C. 1421i. Since the Guam ter-

ritorial income tax must mirror the Federal Internal Revenue Code of 1986, Guam must tax foreign investors at the 30 percent rate.

Although tax treaties lower the tax on foreign investment in the United States, Guam is not considered part of the United States for purposes of those treaties. As a result, the tax on foreign investment continues to be taxed at the 30 percent rate in Guam, while it is typically only 5 to 15 percent on foreign investment in the United States.

Guam needs to lower its tax rate to help it attract foreign investment. Federal legislation is needed to lower the tax rate because the Organic Act of Guam ties Guam's tax rate to the rate set in the Federal Internal Revenue Code.

H.R. 309 would lower the tax rate on foreign investment in Guam by amending the Organic Act of Guam to authorize Guam to apply the tax rate that would apply "were Guam treated as part of the United States for purposes of" the tax treaties.

LEGISLATIVE HISTORY

H.R. 309 was introduced by Representative Underwood and referred to the House Committee on Resources on January 30, 2001. The Committee on resources ordered the bill reported by voice vote on March 28, 2001. H. Rept. 107-48. The House or Representatives passed the bill by voice vote on May 1, 2001.

During the 106th Congress, similar legislation appeared as section 3 of H.R. 2462, the Guam Omnibus Opportunities Act, when it passed the House of Representatives on July 25, 2000. The Senate struck the provision, House of Representatives agreed to the Senate amendment, and H.R. 2462 became Public Law 106-504 without addressing the issue.

The Committee on Energy and Natural Resources held a hearing on H.R. 309 on July 27, 2001. The Committee considered H.R. 309 at its business meeting on June 5, 2002, and ordered the bill favorably reported.

COMMITTEE RECOMMENDATION

The Senate Committee on Energy and Natural Resources, in open business session on June 5, 2002, by a voice vote of a quorum present, recommends that the Senate pass H.R. 309 without amendment.

SECTION-BY-SECTION

The provisions of H.R. 309 are self-explanatory.

COST AND BUDGETARY CONSIDERATIONS

The following estimate of the costs of this measure has been provided by the Congressional Budget Office:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, June 14, 2002.

Hon. JEFF BINGAMAN,
Chairman, Committee on Energy and Natural Resources,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 309, the Guam Foreign Investment Equity Act.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contacts are Matthew Pickford (for federal costs) and Marjorie Miller (for the state and local impact).

Sincerely,

BARRY B. ANDERSON
(For Dan L. Crippen, Director).

Enclosure.

H.R. 309—Guam Foreign Investment Equity Act

H.R. 309 would amend the Organic Act of Guam to require the government of Guam to tax the earnings of foreign investors at the same rates as those applied by the 50 states under U.S. tax treaties with foreign countries. Because the act would not affect federal tax rates, CBO estimates that implementing H.R. 309 would have no impact on the federal budget. Because the legislation would not affect direct spending or governmental receipts, pay-as-you-go procedures would not apply.

H.R. 309 contains no private-sector or intergovernmental mandates as defined in the Unfunded Mandates Reform Act. The act would change the tax rate applied to income earned by foreign (i.e., non-U.S. and non-Guamanian) investors under the Guam territorial income tax. This change would allow income earned in Guam by foreign investors to be taxed at the same rates as would apply to such income earned in the 50 states—rates established by tax treaties with foreign countries. In the short term, this change would result in decreased revenues from the Guam territorial income tax. In the long term, however, those losses could be offset to the extent that increased foreign investment in the territory generates increased tax revenues.

Enactment of this legislation would have no significant impact on the budgets of other state, local, or tribal governments.

On March 28, 2001, CBO transmitted a cost estimate for H.R. 309 as ordered reported by the House Committee on Resources. The two versions of the legislation are identical, and our cost estimates are the same.

The CBO staff contacts for this estimate are Matthew Pickford (for federal costs) and Marjorie Miller (for the state and local impact). This estimate was approved by Peter H. Fontaine, Deputy Assistant Director for Budget Analysis.

REGULATORY IMPACT EVALUATION

In compliance with paragraph 11(b) of the rule XXVI of the Standing Rules of the Senate, the Committee makes the following evaluation of the regulatory impact which would be incurred in carrying out H.R. 309.

The bill is not a regulatory measure in the sense of imposing Government established standards or significant economic responsibilities on private individuals and businesses.

No personal information would be collected in administering the program. Therefore, there would be no impact on personal privacy.

Little, if any additional paperwork would result from the enactment of H.R. 309.

EXECUTIVE COMMUNICATIONS

On July 25, 2001, the Committee on Energy and Natural Resources requested legislative reports from the Department of the Interior and the Office of Management and Budget setting forth executive views on H.R. 309. These reports have not been received at the time the report was filed. The testimony provided by the Department of the Interior at the Committee hearing follows:

STATEMENT OF CHRISTOPHER KEARNEY, DEPUTY ASSISTANT
SECRETARY FOR POLICY AND INTERNATIONAL AFFAIRS,
DEPARTMENT OF THE INTERIOR

Mr. Chairman and members of the Committee, it is a pleasure for me to appear before you today to discuss the Administration's views on H.R. 309—the Guam Foreign Investment Equity Act.

BACKGROUND

Foreign investors, who do not reside in Guam, contribute significantly to the economy of Guam. Under current United States law, such investors pay tax to Guam at a rate of thirty percent on the gross amount of interest, dividend, rent, royalty and other periodic income derived from their investments. With respect to investment within the fifty states, foreign non-resident investors pay United States taxes, but the rate of such tax is often reduced significantly under one of the over sixty income tax treaties to which the United States is a party. This disparity in tax rates has proven to be a disincentive for investment in Guam by foreign investors.

There are three ways to lessen the taxation of foreign investors who do not reside in Guam. The first would be the re-negotiation of current United States treaties to cover Guam. Such an undertaking would be a time-consuming and expensive governmental task. Second, under the 1986 tax act, Guam could reduce its tax rates if it chose to de-link its tax system from the Federal system. Guam has chosen not to de-link. Third, the Congress, by law, can assign the benefit of the tax treaties to foreign investors on Guam.

This last alternative is embodied in H.R. 309. Under the bill, foreign investor income would be subject to tax at the rate that would apply were Guam covered by United States tax treaties. H.R. 309 would level the playing field for Guam, and bolster its economy.

ADMINISTRATION POSITION

The Administration supports the enactment of H.R. 309.

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the act H.R. 309, as ordered reported, are shown as follows (existing law proposed to be omitted is enclosed in brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

PUBLIC LAWS—CH. 512—AUG. 1, 1950

[CHAPTER 512]

AN ACT To provide a civil government for Guam, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the “Organic Act of Guam”.

* * * * *

SEC. 31. (a) The income-tax laws in force in the United States of America and those which may hereafter be enacted shall be held to be likewise in force in Guam: *Provided*, That notwithstanding any other provision of law, the Legislature of Guam may levy a separate tax on all taxpayers in an amount not to exceed 10 per centum of their annual income tax obligation to the Government of Guam.

* * * * *

(d)(1) * * *

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(3) *In applying as the Guam Territorial income tax the income-tax laws in force in Guam pursuant to subsection (a) of this section, the rate of tax under sections 871, 881, 884, 1441, 1442, 1443, 1445, and 1446 of the Internal Revenue Code of 1986 on any item of income from sources within Guam shall be the same as the rate which would apply with respect to such item were Guam treated as part of the United States for purposes of the treaty obligations of the United States. The preceding sentence shall not apply to determine the rate of tax on any item of income received from a Guam payor if, for any taxable year, the taxes of the Guam payor were rebated under Guam law. For purposes of this subsection, the term “Guam payor” means the person from whom the item of income would be deemed to be received for purposes of claiming treaty benefits were Guam treated as part of the United States.*

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